(1920) 12 CAL CK 0014

Calcutta High Court

Case No: None

Jogendra Kumar Nag and Another		APPELLANT
	Vs	
Emperor		RESPONDENT

Date of Decision: Dec. 22, 1920

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 110(f), 117(4), 233, 537

Citation: AIR 1921 Cal 625 : 61 Ind. Cas. 233

Hon'ble Judges: Ghose, J; Beachcroft, J

Bench: Division Bench

Judgement

Beachcroft, J.

The two petitioners before us have been ordered in a joint trial, by the Sub-Divisional Officer of Jamalpur, to give security for their good behaviour for one year on the finding that they were by habit thieves and burglars. The order was upheld on appeal by the District Magistrate. The matter came before this Court, when a re hearing of the appeal was directed, mainly on the grounds, that the Magistrate had not properly considered the question whether a joint trial of the petitioners was legal, and that he had improperly relied on the keeping of history sheets by the Police and on the fact that the Superintendent of Police had concluded that the case was not the result of party faction.

2. The appeal was re-heard and the order of the Sub-Divisional officer upheld, with the result that the petitioners again came to this Court and obtained the present Rule on points which, in substance, amount to two, viz., that there was no legal evidence to establish association which alone would justify a joint trial, with the subordinate point that in any case so far as the enquiry was one u/s 110(f) the joint trial was illegal, and that on the facts the order was not Justifiable.

3. The first-hand evidence to prove association is not very strong : of course, evidence of repute is useless for the purpose of proving associated, but there is evidence which, if believed, as the Magistrate seems to have, would justify the joint trial.

4. Speaking for myself, I have always felt very much doubt whether the provisions of Section 117(4) can properly be applied to proceeding u/s 110, when the matter under enquiry is whether a person is a habitual offender. I am inclined to think that the insertion of this Sub section by Act V of 1898 was intended to remove doubts as to the legality of taking joint proceedings against persons who were considered fit subjects for the application of Section 107, in such cases, for instance, as land or hat dispute?, where ordinarily several persons were concerned and the fear of a breach of the peace arose not so mush from an individual as from a party. Under the old Code, the practice was to deal with individuals forming one party in such cases in a joint trial, though there was no provision for such a trial in the Code, and the amendment possibly was with the object of regularizing gush. The sub-section has, however, been introduced into a section which deals with proceeding u/s 110 as well as with those u/s 107, and I do not intend to question the view that there can be a joint trial of persona called on to show cause u/s 110, as the view ha frequently been taken that such a trial is a good one, ac, for instance, in the cases of Kalu Miiza v. Emperor 5 Ind. Cas. 29 : 37 C. 91 : 14 C.W.N. 49 : 11 Cr. L.J. 23 and Godhan Ahir v. Emperor 47 Ind. Cas. 95 : 4 P.L.J. 7 : 19 Cr.L.J. 899 where there is evidence in the nature of a conspiracy or of Acting ii concert. And if there can he a joint trial in respect of Clauses (a) to (e) of coeditor 110, which deal with habitual offenders, Idec not Epee why the same provision should not bi applicable to Clause (f), where it is the association of persons which makes them dangerous to the community.

4. I have said there is evidence, which, if believed, would justify the joint trial. But apart from the finding of the lower Appellate Court on this question of fact, there are two other matters which deserve consideration in this conation. The first is, that the legality of a joint trial must depend on what is alleged for the prosecution not on the facts subsequently found to be true. In the very nature of things that must be so. Otherwise, we should be driven to this state of things, that in many cases, there could be no determination whether the joint trial was legal or not till the result of the case was known, a proposition which has only to be stated to be rejected. The case for the Crown was, that certain facts existed: the existence of such facts would undoubtedly prove such association as was necessary to justify joint trial: the legality of the trial should not depend on whether the Crown subsided in proving those facts.

5. The other matter is, that no objection was taken to the joint trial in the first Court. It is not argued that in fact either petitioner has been prejudiced. It is argued that the explanation to Section 537, Criminal Procedure Code, would not apply in this case, for if a joint trial was bad an illegality had been committed and not a mere

irregularity, such as could be cured by Section 537. Reference was made to the well-known case of Subramania Iyer v. King-Emperor 5 C.W.N. 866 : 25 M. 61 : 11 M.L.J. 233 : 3 Bom. L.R. 540 : 28 I.A. 257 : 2 Weir 271 : 8 Sar. P.C.J. 160 (P.C.). The remarks of the Privy Council in that case have, I venture to think, often been carried beyond their legitimate application, and the recent tendency has been to enquire more closely as to their application to cases that arise. The statement of the law that "disobedience to an express provision as to a mode of trial is not a mere irregularity" would, no doubt, apply to a case where a joint trial has been held contrary to a provision of law. Now, there is no provision in the Code which directs separate enquiries in the case of proceeding u/s 110. In fact, the only provision for trying per. sons accused of offenses separately is to he found in Section 233, which provides that every charge shall be tried separately subject to certain exceptions. Sub-section (4) of Section 117 which is merely au enabling provision cannot, of coerce, be taken as having a restrictive effect. So that it is only by taking Section 233 as applicable to enquiries in cases u/s 110, though in such cases no charge need be framed, that any provision of law for separate trial is to be found. Consequently, only on that view, and the point is at least an arguable one, could it be Paid that an express provision of law had been contravened. However, it is not necessary to pursue this part of the subject further in view of what I have already said both as to the Appellate Court''s findings and as to the allegations on which the enquiry was based.

6. Apart from the legal objections as to the mode of trial, it is argued for the petitioners that the evidence is insufficient, consisting, as it does, largely of Police evidence which should be viewed with suspicion and of so culled evidence of repute, which is to a great extent hearsay.

7. In fact, the Police evidence does not carry us very far. We are given instances of crimes reported, cases in which the petitioners houses were searched, burglaries with the finding of weapons which suggested the work of bhaddralokt, and the finding of shoes which fitted the petitioners. I don''t lay much stress on these, especially on the Act point. There is also mention of steps being taken by the Police, whish resulted in a cessation of crime for a time. Against this point it is urged that both petitioners were away from Sherpur for a long time. That they or may not be a point in their favour, according as their absence was coincident with the continuance or cessation of crime. It is not quite clear when they left or when they returned. In reference to the reporting of crimes, we are repeatedly told that these petitioners were suspected, but it is seldom stated by whom. The Police Officer don''t say in terms that they themselves suspected the petitioners, and if the persons who suspected them are the informants in the case", their evidence if, generally speaking, not, borne out by the information themselves, in only one of which did the informant allege his suspicions, The value of suspicions which only arose later is naturally very much water and at beat the existence of suspicion an only be material a corroborating a witness evidence as to repute,

8. Then, a certain amount of the evidence, other than the Police evidence, is merely justifies the conclusion arrived at by the lower Courts. In my opinion, the Rule should be discharged. concur, under the colour of evidence of repute. What is meant by general reputation was pointed out in the case of Bai lsri prashad v. Qqeen-Empress 23 C. 621 : 12 Ind. Dec. (N.S.) 418 "a man''s general reputation is the reputation which he bears in the place in whish he lives amongst all the townsmen, and if it is proved that a man who lives in a particular place is looked upon by his fellow townsmen, whether they happen to know him or not, as a man of good repute that is strong evidence that be is a man of that character. On the other hand, if the state of things is that the body of his fellow townsmen, who knew him look upon him as a dangerous man and a man of bad habits, that is strong evidence that he is a man of bad character," Now, it may not always be easy to say where rumor ends and reputation begins, in the case of a man whom you don''t personally know, and probably the roots of a bad reputation are often planted in rumor. But there is, in the present case, a considerable body of evidence which is really evidence of repute. It is not a sufficient answer to that evidence to faction on the statements of some witnesses who say they only regarded the petitioners as of bad character from the time that they were suspected in Case No. 10 of 1916. The evidence of repute goes back a great deal further than that. And, added to the evidence of people in humbler walks of life, there is the evidence of five Zamindars, four of whom are Magistrates and the other Chairman of the Municipality. The four Magistrates assert the petitioners'' bad reputation, the Chairman of the Municipality is more guarded and the balance of his evidence is rather in favour of the petitioners. He says: "Some say they are not good, some say they are more sinned against than sinning." He would not object to letting his brother mix with them, and says, "unless I find evidence of bad character outweighs the good, I must, give them the benefit of the doubt." But the Deputy Magistrate, who is the brother of this gentleman, regards the petitioners as thieves and burglars.

9. After excluding from consideration inadmissible evidence, there still remains a considerable quantity of material which justifies the conclusion arrived at by the lower court. In my opinion, the rule should be discharged.

Ghose, J.

10. I agree.